



Fast Track Proposed Regulation Agency Background Document

Approving authority name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-720-70.C.
Regulation title	<u>Water Quality Management Planning Regulation</u>
Action title	Amendments to Water Quality Management Planning Regulation; Rappahannock River Basin Nutrient Waste Load Allocations
Document preparation date	April 27, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed amendments to 9 VAC 25-720-70.C. would revise the total nitrogen and total phosphorus waste load allocations for the Fredericksburg Wastewater Treatment Facility (VA0025127), located in the Rappahannock basin. At the Board's September 21, 2005 meeting, nutrient waste load allocations were adopted for significant dischargers in several Chesapeake Bay river basins, including the Rappahannock. The basis for the allocations was a combination of each facility's design flow coupled with stringent nutrient reduction treatment. Design flow was defined as the capacity authorized by the VPDES permit and certified for operation by the State under 9 VAC 25-790-50. The Fredericksburg WWTF was assigned nutrient waste load allocations (WLA) based on these values:

Design Flow (MGD)	Annual Avg TN Concentration (mg/L)	TN WLA (lbs/yr)	Annual Avg TP Concentration (mg/L)	TP WLA (lbs/yr)
3.50	4.0	42,638	0.3	3,198

In 1994, Fredericksburg completed an upgrade of their wastewater treatment plant which was authorized to discharge at a design flow of **3.5** million gallons per day (MGD). A Certificate to Operate was issued which read in part, "*The project included a 4.5 MGD sewage treatment works...*". Subsequent reissuance

of the VPDES permit authorized the discharge of 4.5 MGD but only after repeal of the 208 Water Quality Management Plan, which only addressed a 3.5 MGD plant. The 208 Plan was repealed in 2003. Since issuance of a revised Discharge Monitoring Report form in December 2005, the Fredericksburg WWTF has a **4.5 MGD design flow** certified for operation and authorized by the VPDES permit. Therefore, nutrient waste load allocations for this discharge should be based on a design flow of 4.5 MGD, rather than 3.5 MGD, as follows:

Design Flow (MGD)	Annual Avg TN Concentration (mg/L)	TN WLA (lbs/yr)	Annual Avg TP Concentration (mg/L)	TP WLA (lbs/yr)
4.50	4.0	54,820	0.3	4,112

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At their June 1, 2006 meeting, the State Water Control Board heard the following recommendations by staff of the Department of Environmental Quality:

1. That the Board authorize the Department to promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. That the Board authorize the Department to set an effective date 30 days after close of the 60-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 5-170-100.C. concerning the use of the participatory approach or alternatives.

The motion to accept the staff recommendations was accepted unanimously.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

State mandate in the Code of Virginia, §62.1-44.15, is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Code of Virginia) at §62.1-44.15(10) mandates the Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. In addition, §62.1-44.15(14) requires the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. The specific effluent limits needed to meet the water quality goals are discretionary.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of the current requirements for the treatment of wastewater that will contribute to the attainment of the Virginia Water Quality Standards.

Action on this regulatory package has been completed by the Office of Attorney General, and the Board's authority to adopt these point source nutrient discharge regulations has been certified.

State Water Control Law (Code of Virginia) web site:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15>

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this rulemaking is to amend the total nitrogen and total phosphorus waste load allocations for the Fredericksburg Wastewater Treatment Facility, reflecting use of an updated design flow figure in the underlying calculation of these allocations. It is the responsibility of the Board to protect State waters by adopting regulations that are technically correct, necessary and reasonable. The effect of this regulatory action is to establish permit limitations for two nutrients – total nitrogen and total phosphorus -- for certain dischargers within Virginia's portion of the Chesapeake Bay watershed. Resulting permit limitations will be expressed principally as annual waste load allocations, and also as technology-based annual average concentrations where appropriate and authorized. These actions are needed because nutrients discharged from wastewater treatment plants contribute to the overall, excessive loading of nitrogen and phosphorus to the Bay and its tributaries. These nutrients have been identified as pollutants contributing to adverse impacts on large portions of the Bay and its tidal rivers, which are included in the list of impaired waters required under §303(d) of the Clean Water Act and §62.1-44.19:5 of the Code of Virginia. Waters not meeting standards will require development of a Total Maximum Daily Load (TMDL), also required under the same sections of federal and state law. In May 1999, EPA Region III included most of Virginia's portion of the Bay and extensive sections of several tidal tributaries on Virginia's impaired waters list. The *Chesapeake 2000 Agreement* commits Virginia to the goal of removing the Bay and its tidal tributaries from the list of impaired waters by 2010. Thus, the development of a TMDL for the entire Bay is not being scheduled until 2010, anticipating that the Chesapeake Bay Program partners can cooperatively achieve water quality standards by that time making a Bay-wide TMDL unnecessary. These regulatory actions will help to meet the goals of the *Chesapeake 2000 Agreement*.

Achievement of the point source effluent limitations governed by the proposed amendments will aid in compliance with Virginia's new tidal water quality standards and are reasonably expected to contribute to the attainment or maintenance of such water quality.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendments are expected to be non-controversial, and therefore justify using the fast-track process. The total nitrogen and total phosphorus waste load allocations assigned to significant dischargers under the amendments to 9 VAC 25-720 adopted by the Board in 2005 used a consistent approach of coupling full design flow with stringent nutrient reduction technology. In the case of Fredericksburg WWTF, the physical capacity to treat 4.5 MGD has been in place since an upgrade project was completed in 1994, and it only remained for the VPDES permit to authorize this design flow so it could be used in the calculation of nutrient waste load allocations. That authorization was given by DEQ in December 2005 with a reissued Discharge Monitoring Report form, and use of this updated design flow figure will make the basis for Fredericksburg's nutrient waste load allocations consistent with the other significant dischargers affected by 9 VAC 25-720.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

In 9 VAC 25-720-70.C., for the Fredericksburg WWTF (VA0025127), revise the total nitrogen (TN) waste load allocation figure from 42,638 to 54,820 pounds per year, and the total phosphorus (TP) waste load allocation figure from 3,198 to 4,112 pounds per year. Also revise the total basin TN waste load allocation figure from 602,062 to 614,245 pounds per year, and the total basin TP waste load allocation figure from 45,155 to 46,068 pounds per year.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The public will benefit, as these amendments will result in the discharge of reduced amounts of nitrogen and phosphorus in the Chesapeake Bay watershed. This, in turn, will aid in water quality restoration in the Bay and its tributary rivers, and assist in meeting the water quality standards necessary for protection of the living resources that inhabit the Bay. The City of Fredericksburg will benefit, being able to fully utilize the investment made in treatment capacity for the 1994 upgrade project, and making the basis for the facility's nutrient waste load allocations consistent with the other significant dischargers affected by 9 VAC 25-720. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Requirements More Restrictive Than Federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Notification was sent 2/18/05 to the appropriate General Assembly Committees (in accordance with §62.1-44.15(10), Virginia Code), describing provisions of the regulations, finally adopted by the Board in late 2005, which may be more restrictive than applicable federal requirements along with the reason why those provisions were needed. Because EPA has no specific regulation that establishes nutrient effluent limits in permits, some might view the proposals as more stringent than federal requirements and for this reason the General Assembly was notified during the original rulemaking to ensure the intent of the Code was met. The proposed amendments have the effect of increasing the nutrient waste load allocations for the Fredericksburg WWTF.

Locality Particularly Affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Only the City of Fredericksburg, which owns and operates the Fredericksburg WWTF, is particularly affected by the proposed amendments.

Regulatory Flexibility Analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Analysis not performed as no small businesses are affected.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

None expected.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternative approach, less burdensome or intrusive, identified. Proposed amendments are in fact equitable for the Fredericksburg WWTF, making the calculation used to assign nutrient waste load allocations consistent with the other significant dischargers affected by 9 VAC 25-720.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No direct impact expected.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-720-70.C.		Rappahannock River Basin: Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.	1) For the Fredericksburg WWTF (VA0025127): <ul style="list-style-type: none"> • Delete the TN waste load allocation figure of “42,638”, and replace with “54,820”. • Delete the TP waste load allocation figure of “3,198”, and replace with “4,112”. 2) For the Rappahannock Totals: <ul style="list-style-type: none"> • Delete the TN waste load allocation figure of “602,062”, and replace with “614,245”. • Delete the TP waste load allocation figure of “45,155”, and replace with “46,068”.